

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

In the Matter of:

THE APPLICATION OF THOROUGHbred)	
GENERATING COMPANY, LLC FOR A)	CASE NO.
MERCHANT POWER PLANT CONSTRUCTION)	2002-00150
CERTIFICATE IN MUHLENBERG COUNTY,)	
KENTUCKY)	

O R D E R

The Kentucky State Board on Electric Generation and Transmission Siting ("Board") has before it two Motions in this case. The first motion is a Motion to Strike the Testimony of Durham and Watrous, filed by Thoroughbred Generating Company, LLC ("Thoroughbred") on October 20, 2003. The second is a Joint Motion filed by the parties to this proceeding. We deny the first and grant the second herein.

Motion to Strike

Thoroughbred has moved to strike the testimony of Mike Durham, witness for Big Rivers, and Gary Watrous, an Intervenor in this case. Thoroughbred argues that the testimony of both concerns air quality and emissions issues beyond the jurisdiction of the Board to consider under KRS 278.710 and further, that the testimony is speculative regarding the economic impact on the region and the state. Gary Watrous urges the Board to overrule the motion, as the Board's procedural rules do not authorize the filing of such motions. In the alternative, the Board is urged to overrule the motion to strike,

since Mr. Watrous testimony speaks to one of the statutory criteria for approval of the construction certificate requested by Thoroughbred.

Big Rivers urges the Board to overrule the Motion, as the testimony of witness Durham falls within the Board's stated jurisdiction to consider emissions and discharges to the extent they have an economic impact on the region and the state. Big Rivers further urges the Board to allow the testimony, as it is both relevant and admissible.

The Board notes that it has previously touched upon this issue in a prior Order dated October 1, 2003 in this case. In deferring a ruling on a pending motion in that Order, we noted that, although some of the testimony raised issues beyond the scope of our jurisdiction, we could consider such issues to the extent they directly impact a factor enumerated in KRS 278.710. The objections raised by Thoroughbred are sufficient to affect the weight to be accorded such testimony but are insufficient to warrant striking the testimony. Accordingly, the motion should be denied.

Joint Motion

The Board convened its public hearing on October 21, 2003, to consider the application of Thoroughbred. At that hearing, it was discovered that the public hearing notice required by 807 KAR 5:110, Section 9(1) had not been given. The hearing was recessed and the parties have now filed a Joint Motion that will allow the case to move forward and allow sufficient time for the requisite public notice to be published. The Board also recognizes that in the filing of the motion, none of the parties have waived their objections to the sufficiency of the initial or amended application.

After consideration of the Joint Motion and being otherwise sufficiently advised, the Board finds the motion reasonable and finds that it should be granted.

IT IS THEREFORE ORDERED that:

1. Thoroughbred's Motion to Strike the Testimony of Watrous and Durham is denied.
2. The Joint Motion is granted.
3. Thoroughbred's application is effectively amended by the rebuttal testimony of Diana Tickner and shall be treated as filed as of October 13, 2003.
4. An evidentiary hearing in this matter shall be held Monday, November 10, 2003, in Hearing Room 1 at the offices of the Kentucky Public Service Commission at 10:00 a.m., Eastern Standard Time.
5. The public comments taken by the Board on October 21, 2003 shall be transcribed and entered into the public comment portion of the record prior to the beginning of the evidentiary hearing scheduled herein.

Done at Frankfort, Kentucky, this 30th day of October, 2003.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Thomas H. Doherty", written over a horizontal line.

Executive Director
Public Service Commission
on behalf of The Kentucky State Board on
Electric Generation and Transmission Siting